

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DEBBIE RHODES)	
Claimant)	
)	
VS.)	Docket No. 1,032,555
)	
DILLON COMPANIES, INC.)	
Self-Insured Respondent)	

ORDER

Respondent requests review of the March 29, 2007 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge (ALJ) found the claimant "was injured out of and in the course of employment with the [r]espondent"¹ on August 20, 2006 and authorized medical treatment and temporary total disability benefits if and when claimant was taken off work.

The respondent requests review of this decision. Although no brief was filed, it appears from the transcript that respondent argues claimant had been suffering from ongoing left knee complaints and that the medical records do not corroborate her contention that she twisted her knee on August 20, 2006 while emptying trash. Rather, those records reflect an acute onset of swelling with no known injury, much like claimant had been experiencing in recent years.

Claimant has likewise not filed a brief, but would presumably ask the Board to affirm the ALJ's Order in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

¹ ALJ Order (Mar. 29, 2007).

Claimant has undergone two surgeries to her left knee, the first in 1999 and the second in 2003. In both instances, there were no traumatic events associated with claimant's surgeries. Rather, she would notice a prominent increase in pain and swelling over time and would seek out medical treatment. Following a tibial tubercle transfer at the hands of Dr. Michael McCoy, claimant was released from active treatment on December 21, 2005.

Thereafter, claimant became employed by respondent and was assigned to the bakery department. On August 20, 2006 she alleges she twisted her left knee while taking some trash out. According to claimant she immediately felt pain but she returned to the bakery to box up some cookies. Claimant then went to the restroom and her left knee was "all swollen up and really hurting."² She informed a co-worker of what happened and left to go to the emergency room.

The records from the emergency room do not reflect any twisting maneuver or any acute injury. Rather, the records merely say claimant developed pain and swelling in her left knee while at work. However, subsequent medical records do reference a twisting movement. None of the records speak to whether claimant's present complaints and need for a possible patellofemoral arthroplasty are related or whether this represents a new injury, assuming you accept claimant's contention that she was actually twisting at the time of her injury.

The sole question for purposes of this appeal is whether claimant sustained an accident arising out of and in the course of her employment with respondent. Respondent contends this incident is just like the earlier ones. Claimant did not twist as she was taking out the trash because that maneuver isn't mentioned in the emergency room records. Rather, respondent says it is far more likely that claimant just noticed an unexplained onset of swelling and pain, much like she experienced in years past. And thus, this event is not compensable.

In order for a claimant to collect workers compensation benefits he must suffer an accidental injury that arose out of and in the course of his employment. The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when it is apparent to the rational mind, upon consideration of all circumstances, that there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of"

² P.H. Trans. at 8.

employment if it arises out of the nature, conditions, obligations and incidents of the employment.³

Here, this decision turns upon the claimant's credibility and the ALJ apparently found claimant to be persuasive and credible. The Board has, in the past, found that where there is conflicting testimony credibility of the witnesses is important. Here, the ALJ had the opportunity to personally observe the claimant. In granting claimant's request for medical treatment and temporary total disability benefits, the ALJ apparently believed her testimony over the respondent's contention that claimant's complaints came on her as a result of a previous injury, unrelated to her work activities. This member of the Board concludes that some deference may be given to the ALJ's findings and conclusions because he was able to judge the witnesses' credibility by personally observing them testify. Accordingly, the ALJ's Order is affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.⁴ Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge John D. Clark dated March 29, 2007, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2007.

BOARD MEMBER

c: Michael L. Snider, Attorney for Claimant
Edward D. Heath, Attorney for Self-Insured Respondent
John D. Clark, Administrative Law Judge

³ *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

⁴ K.S.A. 44-534a.